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Attorneys for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
BRIAN WHITWORTH,  
  
Defendant.

CASE NO. 1:22-CR-00222-ADA-BAM

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
ORDER

DATE: May 10, 2023  
TIME: 1:00 p.m.  
COURT: Hon. Barbara A. McAuliffe

**BACKGROUND**

This case is set for a status conference on May 10, 2023. This Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

**STIPULATION**

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for a status conference on May 10, 2023.
2. By this stipulation, defendant now moves to continue the status conference until September 13, 2023, and to exclude time between May 10, 2023, and September 13, 2023, under 18

1 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

2 3. The parties agree and stipulate, and request that the Court find the following:

3 a) The discovery associated with this case includes 5.34 gigabytes of discovery  
4 including investigative reports, audio and video footage, and related documents in electronic  
5 form. All of this discovery has been either produced directly to counsel and/or made available  
6 for inspection and copying.

7 b) Counsel for defendant desires additional time to consult with his client, review the  
8 current charges, review discovery, and to conduct investigation related to the charges.

9 c) Counsel for defendant believes that failure to grant the above-requested  
10 continuance would deny him the reasonable time necessary for effective preparation, taking into  
11 account the exercise of due diligence.

12 d) The government and the defense counsel have entered into plea negotiations with  
13 the hopes to resolve the case short of trial. The parties request additional time to discuss the  
14 terms of the potential plea in order to reach an agreement.

15 e) Specifically, upon entering plea discussions the parties realized that the provisions  
16 of the Armed Career Criminal Act, 18 U.S.C Section 924(e) may apply to Whitworth. The  
17 government sought conviction records to determine whether the underlying convictions qualify.  
18 The parties hoped to have the records before the status conference; however, the government is  
19 still awaiting conviction records for one of the potentially qualifying offenses. Therefore, the  
20 parties are still unable to finalize terms of a potential deal until all conviction records have been  
21 received. This will allow the parties to determine whether the Armed Career Criminal act applies  
22 to the defendant. Both parties desire additional time to review conviction records and research  
23 the underlying law related to the Armed Career Criminal Act.

24 f) The government does not object to the continuance.

25 g) Based on the above-stated findings, the ends of justice served by continuing the  
26 case as requested outweigh the interest of the public and the defendant in a trial within the  
27 original date prescribed by the Speedy Trial Act.

28 h) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,

et seq., within which trial must commence, the time period of May 10, 2023 to September 13, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: May 2, 2023

PHILLIP A. TALBERT  
United States Attorney

/s/ ARIN C. HEINZ  
ARIN C. HEINZ  
Assistant United States Attorney

Dated: May 2, 2023

/s/ ROBERT LAMANUZZI  
ROBERT LAMANUZZI  
Counsel for Defendant  
BRIAN WHITWORTH

**ORDER**

IT IS SO ORDERED that the status conference is continued from May 10, 2023, to **September 13, 2023, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: May 3, 2023

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE